IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7416 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DURABKHAN KASAMKHAN PATHAN

Versus

VYARA NAGAR PALIKA

Appearance:

MR GIRISH PATEL for Petitioner

MR VM TRIVEDI for Respondent No. 1

Mr. MA Bukhari, AGP for Respondent No. 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/02/2000

ORAL JUDGEMENT

Learned advocate Mr. Shalin Mehta appears for the petitioner. Learned AGP Mr. M.A.Bukhari appears for

the respondent State. In the present petition, in para 19(A), the petitioner has prayed for the following reliefs:

"19(A) restraining the respondents from evicting the petitioner from the land in question (870 sq. mtrs.land of revenue Survey No. 241 and city Survey No. 2042 which is in possession of the petitioner) and restraining the respondents from disturbing the petitioner from possession and ownership of the said land in question."

In para 19(B) and (C), the petitioner has prayed for the following reliefs :

"(B) restraining the respondent municipality from initiating any proceedings for eviction against the petitioner;

(C) directing the respondents to treat the petitioner as the owner of the said land in question"

The petitioner has produced certificate issued by the talati cum mantri of Vyara to show that the petitioner is residing at the said place and is in possession of 870 sq.mtrs. of land of survey No. 241 and that the petitioner is paying rent for the said land since more than ten years. Said certificate is dated 11.12.1985. The petitioner has also produced letter dated 3.12.1986 annexure B to the petition which is a letter issued by the City superintendent, Vyara initiating proceedings against the petitioner for encroachment upon the Government land under section 61 of the Bombay Land Revenue Code. Notice has been served to the petitioner by the City Survey Superintendent, Vyara and the same has been received by the petitioner. The petitioner has also produced the document at annexure "C" page 16 to show that he has paid some education cess to the talati cum mantri, Vyara. Certain xerox copies of receipts were produced on record.

This petition was admitted by this court on 14.12.1988 and byway of interim relief, it was directed that the ad interim relief granted earlier shall continue till further order. Earlier, while issuing notice, the respondents were directed to maintain status quo i.e. if the petitioner is in possession of the land, his possession should not be disturbed. Said interim relief

has continued after issuance of rule.

In this petition, on behalf of the respondents, affidavit in reply has been filed by K. Kailashnathan, Collector, Surat on 4th May, 1989 contending inter alia that the petitioner has illegally encroached upon the land in question.It has been contended that the petitioner has no legal right to encroach upon the government land or to built house unauthorizedly on any part of the land without obtaining permission from the Government. The petitioner has encroached upon the government land and is trying to contend that he is in possession as owner of the land.

I have heard the learned advocates for the parties. Mr. Mehta, the learned advocate appearing for the petitioner has fairly pointed out that the petitioner is not able to show any document which would prove that the petitioner is the owner of the land in question. However, it is his contention that since it is a Government land, it is the Government alone which has power and/or authority to initiate the eviction proceedings against the petitioner and not the respondent Municipality. It is his contention that the respondent Municipality has no power or authority in law to initiate any proceedings for eviction against the petitioner. The petitioner has not produced any document and/or letter to show that the respondent Municipality is contemplating any proceedings for evicting the petitioner from the land in question but has filed the petition only on the basis of an an apprehension that the Nagarpalika may initiate such proceedings against the petitioner and therefore, it is the submission of Mr. Mehta that the respondent municipality has no power to evict the petitioner from the land in question. Mr. Mehta has submitted that the petitioner has constructed house on the land in question and is residing there since last more than twenty years.It is also his submission that if the respondent Government wants to evict the petitioner from the land in question, then, the Government must afford some opportunity to the petitioner to raise objections against the Government and in support of his case, Mr. Mehta has relied upon the decision of the Supreme Court in case of Ahmedabad Municipal Corporation versus Nawab Khan Gulab Khan and others reported in (1997) 11 SCC pg. 121 and has pointed out that the encroachment must have to be removed by the authority within a reasonable time. In the said case, it has been held that the Municipal Corporation is entitled to remove the encroachment without any delay, , if it allows the encroachers to remain in settled possession for a long period, they may

claim semblance of right. It has also been held that the action of the corporation should be in accordance with the procedure established by law, which should be just, fair and reasonable. It has been also held that once the encroachers are well settled for a long time,normally, two weeks' or ten days' notice preceding the action would meet the fairness of procedure.

Relying upon the said decision of the apex Court, he has pointed out that according to the reply of the Government, the land belong to the Government and therefore, the respondent municipality has no power and/or authority in law to evict the petitioner from the land in question. It is also his submission that in view of the long possession of the petitioner, even the Government also cannot summarily evict the petitioner. He has submitted that after receiving the notice dated 3rd December, 1986 from the City Suruvey Superintendent, Vyara, no further proceedings have been initiated so far against the petitioner by the Government. This would lead to raise an inference that the Government must have dropped the said proceedings against the petitioner. He has further submitted that in the affidavit in reply filed by the respondents, there was no comment upon the letter at annexure B, page 15 of the petition. He has further submitted that even if it is assumed without admitting that it is a Government land and does not belong to the petitioner, then, it is the Government alone which has power to initiate eviction proceedings against the petitioner and at one stage, the Government has issued notice for eviction and thereafter, no action has been taken against the petitioner and as such, it can be said that the right has accrued in favour of the petitioner to use and occupy the said land.

I have considered the submissions made from both the sides. I am of the opinion that this petition does not require any decision on merits. I am also of the opinion that this petition can be disposed of with an observation that if the State Government wants to initiate eviction proceedings against the petitioner, it will be open for the Government to do so in accordance with law, after giving just, fair and reasonable opportunity to the petitioner to submit his case and defend his right, if any, available to him in law, in view of the decision of the apex court in case of Nawab Khan (supra).If such directions are issued, same would met end of justice. In such proceedings, it will be open for the petitioner to raise all the contentions available to him in law to establish his long possession based on the certificate issued by the talati cum mantri as also

the receipts reflecting payment of education cess etc.

In view of the above, this petition is disposed of with a direction to the respondent that if the respondent Government wants to take any action against the petitioner for eviction, same shall be taken after following the procedure established by law which is fair and reasonable in view of the averments made in the affidavit in reply that the land belongs to the Government and the respondent Municipality has no power or authority to initiate proceedings against the petitioner. This petition is, thus, partly allowed.Rule is made absolute to the extent indicated hereinabove with no order as to costs.

25.2.2000. (H.K.Rathod,J.)

Vyas